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Kenya: draft articles for the preservation and the protection
of the marine environment for inclusion in the convention on
the law of the sea

Note: These articles are a substitute for the articles
appearing in document A/AC.138/SC.III/L.41

Preamble

This will be inserted later.

Definitions

For the purposes of this Convention:

- (a) "The Authority" means the International Authority established under chapter ... of this Convention.
- (b) "Conservation of the marine environment" means the aggregate of measures taken to render possible the maintenance of the natural quality, productivity and the ecological balance of the marine environment.
- (c) "Marine environment" means the area comprising the air space above the sea, the surface and the subsoil beyond the high tide mark including the living and non-living resources therein.
- (d) "Marine pollutant" means any substance or energy which if introduced to the marine environment results in such deleterious effects as harm to the living resources, hazard to human health, hindrance to marine activities, reduction of marine amenities and impairment of the quality for use of the marine waters.
- (e) "Pollution of the marine environment" means the introduction, deliberately or otherwise and directly or indirectly of marine pollutants into the marine environment.
- (f) "Vessel" means crafts of any kind, self-propelled or not, that displace themselves on the surface of the water, in the water column or in the air space above the marine environment.

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English

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RIGHTS OF STATES AND THE AUTHORITY

Article 1

Within the limits of national jurisdiction the coastal State shall have sovereign rights to explore and exploit the marine resources therein pursuant to the coastal States environmental policies and in accordance with the provisions of these articles. Within these limits the coastal State shall have the right to take appropriate measures to prevent or mitigate dangers or hazards caused by the pollution of the marine environment.

Article 2

In areas beyond the limits of national jurisdiction the Authority shall have the right to explore and exploit the sea-bed marine resources therein on behalf of mankind and in accordance with applicable international law. Within these limits the Authority shall have the right to ensure that appropriate measures are taken to preserve the marine environment and prevent damage by pollution.

DUTIES AND OBLIGATIONS OF STATES, THE AUTHORITY AND OTHER INTERNATIONAL BODIES

Article 3

States and the Authority have the obligation to protect and preserve the quality and the resources of the marine environment in accordance with the provisions of these articles.

Article 4

States shall take all necessary measures to prevent or control pollution of the marine environment. In doing so, States shall use the best practicable means in accordance with their capabilities and their environmental policies individually or jointly. In particular, States shall take measures to ensure that activities carried out under their control or within the area under their jurisdiction do not cause damage by pollution of the marine environment.

Article 5

States shall ensure that measures taken under these articles shall deal with all sources of pollution of the marine environment, whether land, marine or any other sources including rivers, estuaries, the atmosphere, pipelines, outfall structures, vessels, aircraft and sea-bed installations or devices. Such measures shall include inter alia:

(a) With respect to land-based sources of pollution of the marine environment, measures designed to minimize the release of toxic, harmful and persistent substances into the marine environment.

- (b) With respect to pollution from vessels, measures relating to
 - (i) prevention of accidents
 - (ii) safety of operations at sea, and
 - (iii) intentional or other discharges, including measures relating to design, equipment, operation and maintenance of vessels, particularly those engaged in shipment of substances whose release, accidentally or through normal operation of the vessel, would cause pollution of the marine environment.
- (c) With respect to installations, devices or equipment engaged in the exploration and exploitation of the marine resources of the sea-bed, subsoil and the water column, as well as other devices operating in the marine environment, measures for the prevention of accidents and for the safety of operations at sea and especially measures related to design, equipment, operation and maintenance of such installations.
- (d) With respect to pollution from the atmosphere, measures relating to the prevention of accidents involving flying crafts, and release of toxic and harmful substances and particularly atmospheric nuclear fall-outs.

Article 6

The measures taken pursuant to these articles shall,

- (a) With respect to land-based sources of pollution of the marine environment, take into account appropriate geographic, ecologic and economic factors, as well as regional and international standards referred to in article ... of this Convention.
- (b) In respect of marine and atmospheric based sources of pollution of the marine environment, conform to generally accepted regional or international standards referred to in article ... of this Convention.

Article 7

In taking measures to prevent pollution of the marine environment States shall,

- (a) Have due regard to other legitimate uses of the marine environment and shall refrain from unjustifiable interference with such uses.
- (b) Guard against the effect of merely transferring damage from one area to another.

Article 8

The Authority shall have, among its obligations, the setting up of binding standards to control pollution from exploration and exploitation of the marine resources of the sea-bed and the water column beyond the limits of the national jurisdiction.

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Article 9

The Authority shall ensure that all necessary measures are taken to prevent the pollution of the marine environment from all sources beyond the limits of national jurisdiction. In doing so it shall use the best practicable means in accordance with its capability, individually or jointly with other competent international bodies. In particular the Authority shall ensure that all activities carried out in areas beyond the limits of national jurisdiction do not cause damage by pollution of the marine environment.

Article 10

States and competent international bodies shall notify each other of areas within the marine environment which they become aware have been polluted or are in imminent danger of being polluted. The authorities responsible for the area which is in imminent danger of being polluted or which has been polluted shall ensure that necessary measures are taken to terminate the danger or minimize the damage in accordance with appropriate laws and regulations.

Article 11

The UNEP shall provide the over-all integrated framework for comprehensively co-ordinating, reviewing and guiding those activities of States, and of intergovernmental and non-governmental organizations that may affect the quality of the marine environment.

CO-OPERATION AMONG STATES AND INTERNATIONAL BODIES

Article 12

States shall co-operate on a global basis and as appropriate, on a regional basis, directly or through competent international or regional bodies, to conclude treaties, and elaborate rules and procedures consistent with this Convention for the prevention of marine pollution taking into account all relevant factors.

Article 13

States shall co-operate, directly or through competent international or regional organizations for the purpose of promoting studies, undertaking programmes of scientific research and encouraging exchange of information and data acquired concerning the pollution of the marine environment.

Article 14

States shall, according to their capabilities, actively support and contribute to appropriate international programmes designed to acquire knowledge for enhancing the assessment of pollution sources, pathways, exposures, risks and remedies.

Article 15

States shall co-operate directly or through competent international or regional organizations in formulating appropriate scientific criteria for establishing and elaborating adequate rules and standards for the prevention of marine pollution.

Article 16

States shall directly or through competent international or regional organizations, co-operate in eliminating the effects of pollution and preventing or minimizing damage to the marine environment.

SCIENTIFIC AND TECHNICAL ASSISTANCE

Article 17

States shall, individually or through competent international or regional organizations:

(a) Promote programmes of scientific, educational, technical and other assistance to developing countries for the preservation of the marine environment and the prevention of marine pollution. Such assistance shall include, inter alia,

- (i) the training of scientific and technical personnel,
- (ii) facilitation of their participation in relevant international programmes,
- (iii) supply of necessary equipment,
- (iv) enhancement of developing countries' capabilities to manufacture such equipment,
- (v) development of research and monitoring facilities and other educational programmes concerned with the preservation of the marine environment and the prevention of marine pollution or the minimization of its effects.

(b) Promotion and development of contingency plans for responding to major pollution incidents and provision of appropriate assistance to developing countries for the minimization of the effects of such incidents.

Article 18

Developing States shall, for the purpose of the prevention of the marine pollution or the minimization of its effects, be granted preference in the allocation of appropriate funds and technical assistance facilities and the utilization of the specialized services of international organizations.

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MONITORING

Article 19

States shall, as much as is practicable, employ internationally agreed systems of observations, measurement and analysis to determine the risk or effect of pollution on the marine environment, especially pollution likely to arise from activities which they permit or in which they engage.

Article 20

States shall disseminate as soon as possible, the data and information obtained on the risks and effects of pollution on the marine environment to States likely to be affected and to the Authority, as well as to UNEP and to other concerned international organizations, with a request to disseminate such data and information.

REGULATIONS

Article 21

Acting through competent international or regional organizations, States shall establish international standards for the prevention of pollution of the marine environment from all sources under their jurisdiction taking into account, inter alia, available scientific evidence, geographical, ecological and economic factors. States shall, individually and to the extent possible endeavour to adopt these standards within the limits of their national jurisdiction.

Article 22

The Authority individually or in collaboration with other competent international or regional bodies shall formulate and adopt rules and regulations for the preservation of the marine environment and prevention of pollution arising from the air space, the exploration and exploitation of the marine resources of the sea-bed, subsoil and the water column beyond the limits of national jurisdiction.

Article 23

States, acting through competent international or regional bodies, shall establish and adopt international standards for the prevention of pollution from vessels. In establishing these standards due regard shall be given to the need for appropriate standards for special situations.

Article 24

The United Nations Environmental Programme shall endeavour to ensure that standards formulated by States, the Authority and other competent international or regional bodies with respect to any sector of the marine environment are complementary and in accordance with established environmental principles and objectives.

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ENFORCEMENT

Article 25

States shall take appropriate measures to give effect to these articles in respect of land-based and atmospheric sources of marine pollution.

Article 26

Coastal States shall enforce their national or adopted international regulations against pollution of the marine environment on all vessels whether in their ports or in transit, or engaged in the exploration or exploitation of the marine resources within the limits of their national jurisdiction.

Article 27

Coastal States shall enforce national or adopted international measures against pollution of the marine environment originating from the exploration and exploitation of the marine areas within the limits of their national jurisdiction.

Article 28

The Authority shall ensure that measures against all sources of pollution of the marine environment beyond the limits of national jurisdiction are implemented.

RESPONSIBILITY OF STATES AND OF THE AUTHORITY

Article 29

States shall be responsible for damage caused by their activities, those of their nationals, physical or juridical and others under their control or registration to any part of the marine environment.

Article 30

The Authority shall be responsible for damage caused by pollution to the marine environment by its activities or by the activities of those who the Authority permits to undertake exploration and exploitation of the marine resources in areas beyond the limits of national jurisdiction.

COMPENSATION FOR DAMAGE

Article 31

(Appropriate formulation to be worked out later)

SETTLEMENT OF DISPUTES

Article 32

(Appropriate formulation to be worked out later)